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10/557,298

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Fabienne Miler

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EXAMINER

LALLI, MELISSA LYNN

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/557,298	Applicant(s) MILER, FABIENNE	
	Examiner MELISSA L. LALLI	Art Unit 4124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/13/2006, 11/18/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001 .)
- (e) BACKGROUND OF THE INVENTION. (1) Field of the Invention. (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "upper surface" of

claims 12 and 19 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 16 and 17 are objected to because of the following informalities:
Duplicate claims. Claims 16 and 17 are exactly the same. Please cancel one or both claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 12 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 12 and 19 recite the limitation "said upper surface" in line 3. There is insufficient antecedent basis for this limitation in the claim. "Upper surface" is not referred to in any of the previous claims or the specification which renders the claim indefinite. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2004/0118711 to Duffield (Duffield) in view of U.S. Patent No. 5,474,784 to Stevens et al. (Stevens).

In Reference to Claim1:

Duffield teaches:

A filled water-soluble injection moulded container (see fig. 3, unlabeled water-soluble container and paragraph [0024], lines 1-4) containing a first composition (see fig. 3, unlabeled first composition in first compartment 1) held in a first compartment (see fig. 3, first compartment 1) and a second

composition (see fig. 3, second composition 2) held in a second compartment (see fig. 3, unlabeled second compartment holding second composition 2), said first compartment and said second compartment being separated by a water-soluble barrier (see fig. 3, unlabeled water-soluble film between first and second compartments)

Duffield fails to teach the following claimed limitations that are taught by Stevens:

A water-soluble barrier (see col. 3, lines 51-61, the soluble capsule comprises a plurality of hollow compartments each separated from the other by a soluble wall which functions as a water-soluble barrier) having an opening plugged by a plug (see col. 3, lines 19-23).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the orifice plugged by a plug of Stevens on the water-soluble barrier of the container of Duffield in order to provide a delay in the release of the contents of the various compartments (see Stevens, col. 3, lines 51-61) as explicitly stated by Stevens. Stevens states that in the preferred embodiment of the invention, the walls of the capsule are water impermeable. However, this is accomplished by covering the exterior of the capsule formed from a water soluble material with an impermeable coating (see Stevens, col. 5, lines 24-29). This coating could simply be omitted and the capsule could function like the water-soluble container of Applicant or Duffield. Stevens also states that although the water impermeable capsule is preferred, it is not necessary as long as the components are dissolved in the appropriate order (see Stevens, col. 1, lines 57-62). Hence, the orifice plugged by a plug of Stevens on

the water-soluble barrier of the container of Duffield provides the delay in the release of the contents of the various compartments as in Applicant's invention.

In regards to the following portion of the claim 1:

arranged such that when said container is filled with said first composition and said second composition, said first compartment is filled through said opening in said barrier, said barrier is plugged with said plug, and subsequently said second compartment is filled with said second composition and said second compartment is sealed with a closure part.

Duffield teaches that the container is filled with the first composition (see paragraph [0009]) and the second composition (see paragraph [0013], lines 5-7) as well as the second compartment being filled with the second composition and subsequently, the second compartment being sealed with a sealing film (see paragraph [0013], lines 5-7, the sealing film is considered to be the closure part). However, Duffield does not teach the first compartment being filled through the opening in the barrier and the barrier being plugged with the plug. The method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

In Reference to Claim 2:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said closure part (see Duffield, paragraph [0013], lines 5-7) is a

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water-soluble film (see Duffield, paragraph [0002], the closure part is a water soluble film).

In Reference to Claim 3:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said plug comprises a water-soluble composition (see Stevens, col. 1, lines 34-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to have formed the plug out of a water-soluble composition in order to accomplish its purpose of delayed release of the contents of the various components as explicitly stated by Stevens.

In Reference to Claim 4:

Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said plug is spherical (see Stevens, col. 2, lines 58-60).

In Reference to Claim 5:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said first composition (see Duffield, fig. 3, unlabeled first composition in first compartment 1) and said second composition (see Duffield, fig. 3, second composition 2) are each a fabric care, surface care or dishwashing composition (see Duffield, paragraph [0040], lines 1-2 and paragraph [0083]). It is further noted that the intended use, i.e. storing/dispensing fabric care etc., does not serve to distinguish the apparatus from the prior art having the claimed structure.

In Reference to Claim 6:

Duffield and Stevens teach the container according to claim 5 (see rejection of claim 5 above) wherein said first composition (see Duffield, fig. 3, unlabeled first composition in first compartment 1) and said second composition (see Duffield, fig. 3, second composition 2) are each a dishwashing, water-softening, laundry, detergent or rinse aid composition (see Duffield, paragraph [0040], lines 2-4 and paragraph [0083]). It is further noted that the intended use, i.e. storing/dispensing detergent etc., does not serve to distinguish the apparatus from the prior art having the claimed structure.

In Reference to Claim 7:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said first composition (see Duffield, fig. 3, unlabeled first composition in first compartment 1) and said second composition (see Duffield, fig. 3, second composition 2) are each a disinfectant, antibacterial or antiseptic composition (see Duffield, paragraph [0040], lines 5-8 and paragraph [0083]). It is further noted that the intended use, i.e. storing/dispensing disinfectant etc., does not serve to distinguish the apparatus from the prior art having the claimed structure.

In Reference to Claim 8:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of

claim 1 above), wherein said first composition (see Duffield, fig. 3, unlabeled first composition in first compartment 1) and said second composition (see Duffield, fig. 3, second composition 2) are each an agricultural composition (see Duffield, paragraph [0111]). It is further noted that the intended use, i.e. storing/dispensing agricultural compositions etc., does not serve to distinguish the apparatus from the prior art having the claimed structure.

In Reference to Claim 9:

Duffield teaches:

An unfilled water-soluble injection moulded container (see paragraph [0024], lines 1-4) containing a first compartment (see fig. 3, first compartment 1) and a second compartment (see fig. 3, unlabeled second compartment holding second composition 2), said first compartment and said second compartment being separated by a water-soluble barrier (see fig. 3, unlabeled water-soluble film between first and second compartments)

Duffield fails to teach the following claimed limitations that are taught by Stevens:

A water-soluble barrier having an opening (see col. 3, lines 51-61, the soluble capsule comprises a plurality of hollow compartments each separated from the other by a soluble wall which functions as a water-soluble barrier) arranged such that when said container is to be filled said first compartment is arranged to be filled through said opening in said barrier, said barrier is capable of being plugged with a plug (see col. 3,

lines 19-23), and subsequently said second compartment is arranged to be filled through another opening in the container.

It would have been obvious to one of ordinary skill in the art that a container must be unfilled before it is filled; hence, patentable weight will not be given to the term "unfilled" in line 1 of Claim 9. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Also, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight (in regards to "said container is to be filled...").

It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the orifice of Stevens on the water-soluble barrier of the container of Duffield in order to provide an opening so that contents can be placed in the first compartment (see Stevens, col. 3, lines 51-61). Since the capsule of Stevens comprises a plurality of hollow compartments, it is obvious that the compartments are filled as needed through the corresponding orifice of each respective soluble wall or barrier and plugged with the water soluble plug. Stevens states that in the preferred embodiment of the invention, the walls of the capsule are water impermeable. However, this is accomplished by covering the exterior of the capsule formed from a water soluble material with an impermeable coating (see Stevens, col. 5, lines 24-29). This coating could simply be omitted and the capsule could function like the water-soluble container of Applicant or Duffield. Stevens also states that although the water

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impermeable capsule is preferred, it is not necessary as long as the components are dissolved in the appropriate order (see Stevens, col. 1, lines 57-62).

In Reference to Claim 10:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said container is made from a poly(vinyl alcohol) (PVOH) (see Duffield, paragraphs [0030] and [0033], it is obvious to one of ordinary skill in the art that water-soluble containers can be made from PVOH).

In Reference to Claim 11:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), wherein said first compartment (see Duffield, fig. 3, first compartment 1) is defined by a lower surface (see Duffield, fig. 3, unlabeled lower surface of first compartment 1), said barrier (see Duffield, fig. 3, unlabeled water-soluble film between first and second compartments) and walls extending therebetween (see Duffield, fig. 3, unlabeled walls of first compartment 1 extend from lower surface to the barrier), said lower surface and said barrier being substantially parallel (see Duffield, fig. 3, it is obvious that the lower surface and barrier are parallel).

In Reference to Claim 12 (As best understood):

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 1 (see rejection of Claim 1 above), wherein said second compartment (see Duffield, fig. 3, unlabeled

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second compartment holding second composition 2) is defined by an opening (see Stevens, col. 3, lines 19-23), said barrier (see Duffield, fig. 3, unlabeled water-soluble film between first and second compartments) and walls extending therebetween (see Duffield, fig. 3, unlabeled walls of second compartment extend from the barrier), said upper surface (upper surface will be interpreted as film 9) and said opening being substantially parallel (see Duffield, fig. 3, since the opening is on the barrier and the barrier and the upper surface are parallel, it is obvious that the opening and the upper surface are parallel).

In Reference to Claim 13:

According to the modification of Duffield and Stevens as applied to claim 1, Duffield and Stevens teach the container according to claim 1 (see rejection of claim 1 above), which is cuboid (see Duffield, fig. 3). It is obvious that the container of Duffield resembles a cube. It is further noted that a mere change in shape not effecting the function is considered obvious to the skilled artisan.

In Reference to Claim 14:

According to the modification of Duffield and Stevens as applied to claim 1, Duffield and Stevens teach a process for preparing a filled container according to claim 1 (see rejection of claim 1 above) which comprises the steps of: providing an unfilled water-soluble injection moulded container (see Duffield, paragraph [0024], lines 1-4), filling said first compartment with said first composition (see Duffield, paragraph [0009] through said opening in said barrier, plugging said opening with a plug (see Stevens, col. 3, lines 19-23), filling said second compartment with said second composition and

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sealing said second compartment with a closure part (see Duffield, paragraph [0013], lines 5-7).

It would have been obvious to one of ordinary skill in the art that a container must be unfilled before it is filled; hence, patentable weight will not be given to the term "unfilled" in line 3 of Claim 14. It would have further been obvious to one of ordinary skill in the art to fill the container in the sequence listed in claim 14 above and to seal the opening in the barrier with a plug since the purpose of a plug is to keep the contents of the container in its appropriate place until desired as explicitly stated by Stevens.

In Reference to Claim 15:

According to the modification of Duffield and Stevens as applied to claim 1 above, Duffield and Stevens teach the container according to claim 2 (see rejection of claim 2 above), wherein said plug comprises a water-soluble composition (see Stevens, col. 1, lines 34-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to have formed the plug out of a water-soluble composition in order to accomplish its purpose of delayed release of the contents of the various components as explicitly stated by Stevens.

In Reference to Claims 16 and 17:

According to the modification of Duffield and Stevens as applied to claim 9 above, Duffield and Stevens teach the container according to claim 9 (see rejection of claim 9 above), wherein said container is made from a poly(vinyl alcohol) (PVOH) (see Duffield, paragraphs [0030] and [0033], it is obvious to one of ordinary skill in the art that water-soluble containers can be made from PVOH).

In Reference to Claim 18:

According to the modification of Duffield and Stevens as applied to claim 9 above, Duffield and Stevens teach the container according to claim 9 (see rejection of claim 9 above), wherein said first compartment (see Duffield, fig. 3, first compartment 1) is defined by a lower surface (see Duffield, fig. 3, unlabeled lower surface of first compartment 1), said barrier (see Duffield, fig. 3, unlabeled water-soluble film between first and second compartments) and walls extending therebetween (see Duffield, fig. 3, unlabeled walls of first compartment 1 extend from lower surface to the barrier), said lower surface and said barrier being substantially parallel (see Duffield, fig. 3, it is obvious that the lower surface and barrier are parallel).

In Reference to Claim 19 (As best understood):

According to the modification of Duffield and Stevens as applied to claim 9 above, Duffield and Stevens teach the container according to claim 9 (see rejection of Claim 9 above), wherein said second compartment (see Duffield, fig. 3, unlabeled second compartment holding second composition 2) is defined by an opening (see Stevens, col. 3, lines 19-23), said barrier (see Duffield, fig. 3, unlabeled water-soluble film between first and second compartments) and walls extending therebetween (see Duffield, fig. 3, unlabeled walls of second compartment extend from the barrier), said upper surface (upper surface will be interpreted as film 9) and said opening being substantially parallel (see Duffield, fig. 3, since the opening is on the barrier and the barrier and the upper surface are parallel, it is obvious that the opening and the upper surface are parallel).

In Reference to Claim 20:

According to the modification of Duffield and Stevens as applied to claim 9, Duffield and Stevens teach a process for preparing a filled container which comprises the steps of: providing an unfilled water-soluble injection moulded container according to claim 9 (see rejection of claim 9 above); filling said first compartment with said first composition (see Duffield, paragraph [0009] through said opening in said barrier, plugging said opening with a plug (see Stevens, col. 3, lines 19-23), filling said second compartment with said second composition and sealing said second compartment with a closure part (see Duffield, paragraph [0013], lines 5-7).

It would have been obvious to one of ordinary skill in the art to fill the container in the sequence listed in claim 14 above and to seal the opening in the barrier with a plug since the purpose of a plug is to keep the contents of the container in its appropriate place until desired as explicitly stated by Stevens.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The U.S. Patent No.'s 5224601 and 4210139 and U.S. Patent Application Publication 2004/0118738 are generally representative of water-soluble containers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA L. LALLI whose telephone number is (571)270-5056. The examiner can normally be reached on Monday-Friday 7:30 AM-5:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on (571) 272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ML
/Thor S. Campbell/
Primary Examiner, Art Unit 3742